



**Request for City Council Committee Action
Health Department**

Date: June 8, 2015

To: HEALTH, ENVIRONMENT & COMMUNITY ENGAGEMENT COMMITTEE

Subject: PUBLIC HEARING TO AMEND THE TOBACCO ORDINANCE

Recommendations: Approve amendments to the Minneapolis Code of Ordinances Title 13 Tobacco, Chapter 281 related to sales of tobacco products.

Previous Directives: **May 13, 2014:** Presentation to HECE on by Minneapolis Health Department and Minneapolis Youth Congress
July 7, 2014: Recommendations presented to HECE by Minneapolis Youth Congress. Letter supporting recommendations presented by the Minneapolis Public Health Advisory Committee .
May 15, 2015: Referred from City Council.

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Approved by:

Gretchen Musicant, Commissioner of Health

Permanent Review Committee (PRC): Approval ____ Not Applicable X
Policy Review Group (PRG) Approval ____ Date of Approval ____ Not Applicable X

Presenters in Committee: Gretchen Musicant, Commissioner of Health

Financial Impact (Check those that apply)

X No financial impact (If checked, go directly to Background/Supporting Information).

Background/Supporting Information Attached

The Minneapolis Code of Ordinances Title 13 Tobacco, Chapter 281 is being amended to restrict youth access to flavored and cheap tobacco products. The purposes of these changes are to prevent youth tobacco use, lifelong addiction to nicotine and the negative health effects of tobacco use.

According to Minnesota Youth Tobacco Survey - Teens and Tobacco in Minnesota, 2014 Update, 24.2% of Minnesota youth (under 18) used a tobacco product (cigarette, shisha, cigar, smokeless tobacco or e-cigarette) in the last 30 days. Cigarettes are still the most commonly used tobacco product (by 23.3% and 15.1% of high school males and females, respectively) but cigars and other flavored tobacco products are gaining traction.ⁱ

Cigar products

The Minnesota Youth Tobacco Survey 2014 Update also reports that the overall percent of high school students smoking cigars, cigarillos, or little cigars fell from 13.0% in 2011 to 8.2% in 2014; however,

cigars products and smokeless tobacco have increased their share of the shrinking market among high school users.ⁱ This means that cigar products and smokeless tobacco products are becoming more popular among youth tobacco users. The percentage of high school current tobacco users who smoked only cigar products in the past 30 days rose from 10.9 percent in 2011 to 15.8 percent in 2014. Male high school students use cigarettes (10.8%), cigar products (10.9%), and smokeless tobacco (10.8%) at virtually the same rate.ⁱ

The majority of non-premium cigars are flavored. In 2009, the federal government passed the Family Smoking Prevention and Control Act, which banned the manufacture of all flavored cigarettes except the menthol flavor. Because the law did not restrict the use of flavorings in other tobacco products such as cigar products or smokeless tobacco, many tobacco companies started manufacturing flavored cigarillo products. The FDA notes: “Flavored tobacco products have become increasingly common in the United States. These products, containing flavors like vanilla, orange, chocolate, cherry and coffee, are especially attractive to youth. They are widely considered to be ‘starter’ products, establishing smoking habits that can lead to a lifetime of addiction.”ⁱⁱ Tobacco users (particularly youth) often mistakenly assume that flavored tobacco products are safer than other tobacco products.ⁱⁱⁱ

In addition to their flavor, the cheap price of cigar products makes them appealing and accessible to young people. Unlike cigarettes that must be sold in packs of at least 20, cigar products can be sold individually. A common price for a single, flavored cigarillo is \$0.99; cigarillos are sold in 3-packs for as cheap as \$0.99 (or \$0.33 each).

Shisha

Shisha is flavored loose tobacco that is smoked in a waterpipe or hookah. Shisha is sold in flavors such as mint, coffee, cola and nearly all fruit flavors. In Minnesota, 18.4 percent of high school students have tried a hookah and 5.4% of high school students reporting using this product in the last 30 days.ⁱ Nationally, youth hookah use has doubled between 2013 - 2014.^{iv}

E-Cigarettes

Use of electronic cigarettes is also increasing. According to a 2015 CDC report, youth use of electronic cigarettes tripled between 2013-2014.^{iv} In Minnesota, more than one-fourth of high school students (28.4%) have tried electronic cigarettes and 12.9% of Minnesota’s high school students reported using it regularly.ⁱ Most students who have used an e-cigarette in the past 30 days are also using one or more of the conventional tobacco products.ⁱ

In most cases, e-juice, which is used in electronic cigarettes, is flavored. Like shisha and cigar products, e-cigarettes are sold in fruit, candy, coffee and other flavors. E-cigarettes come with or without nicotine.

Minneapolis Data

National and state data regarding the use of flavored cigar products, shisha and e-cigarettes reflect the trends reported by young people from the Minneapolis Youth Congress and Northpoint’s Breathe Free North project. In November 2013, members of the Minneapolis Youth Congress initiated a committee to explore current trends in youth tobacco use and strategies to reduce it. They conducted store visits to familiarize themselves with the availability of flavored tobacco products and conducted convenience sample surveys to determine their peers’ experiences with tobacco. From a survey of 76 underage tobacco users, 55% had used cigarillos, 43% had used shisha and 53% had used electronic cigarettes. Most of the e-cigarette users also smoked cigarettes. The youth also conducted five community conversations to share their findings and gather input on prevention strategies. Based on this input, they presented the following four recommendations to Health, Environment and Community Engagement Committee in July 2014^v:

1. Clean Indoor Air laws (state and local) should prohibit e-cigarette use in all of the same places that cigarette smoking is prohibited.
2. Minimum pack-size and minimum pricing on tobacco items such as little cigars and cigarillos.
3. Flavor tobacco products should only be sold by tobacco-only retailers.
4. No coupons or discounts should be allowed for tobacco products.

In North Minneapolis, young people involved in Northpoint's Breathe Free North program also conducted a study to understand youth access to tobacco. BFN youth leaders administered surveys to 530 youth (under the age of 18) who live in North Minneapolis. Results from this survey indicate that:

- Youth experiment with tobacco products early. Among the 313 youth (59%) who said that they had used a tobacco product, two-thirds reported that they were under the age of 14 when they first tried tobacco.
- Cigars and cigarillos are popular with young people. Over half (52%) of the youth who reported ever using tobacco had used cigars/cigarillos; 38% reported trying shisha and 31% reported trying e-cigarettes.
- Over half of the youth (57%) said that they used flavored tobacco products "always" or "most of the time." The most common reason youth gave for liking tobacco was its flavor or taste.

The BFN youth also conducted store assessments in 30 tobacco vendors located in North Minneapolis and found that 83% of these stores sold flavored tobacco products and the average price for a single cigar was \$1.16.^{vi}

Both initiation and regular use of all tobacco products is concerning because of tobacco's negative health effects. Like cigarettes, cigars, shisha, smokeless tobacco and some e-cigarettes contain nicotine, which is highly addictive and can adversely affect adolescent brain development. Though the long-term health effects of electronic cigarettes are unknown, it is well documented that the prolonged use of other tobacco products can lead to tobacco-related illnesses, which are the leading cause of preventable death in the United States. The health burden of tobacco use is felt most acutely in low-income and communities of color, which have the highest rates of use. Nearly all (90%) of current smokers started before they were age 18 and almost no one begins smoking after age 26. Therefore, preventing youth initiation and regular use of the tobacco products is a reasonable prevention strategy.

This ordinance aims to reduce youth access and use of tobacco products by addressing aspects that make these products appealing and affordable to youth: wide availability of flavored products and inexpensive prices.

Wide Availability of Flavored Products

This ordinance limits the sale of flavored products in Minneapolis to tobacco products shops only. The restriction applies to all flavors (except the menthol flavor) of tobacco products, including (but not limited to) the following products: shisha, snus, snuff (chewing tobacco) e-cigarettes, and all cigar products. Similar to the Federal Drug Administration's (FDA) exemption of the menthol flavor from its flavored cigarette ban, this ordinance does not apply to menthol and mint versions of these products. Also, according to the definition, "tobacco" is not considered a flavor. This means that all tobacco license holders can continue selling tobacco, menthol, and mint versions of tobacco products and non-flavored tobacco products such as unflavored cigars or unflavored smokeless tobacco.

Research shows that the availability and marketing of tobacco affects youth tobacco use. Youth who live or go to schools in neighborhoods with the highest density of tobacco outlets (or with the highest density of retail tobacco advertising) have higher smoking rates compared to youth who live or go to

schools in neighborhoods with fewer or no tobacco outlets.^{vii} Internal tobacco industry documents indicate that convenience stores are considered to be “the single most effective outlet for reaching younger adult smokers.”^{viii} While this ordinance does not affect the number of or density of tobacco retailers, it does reduce the availability and marketing of flavored tobacco products in places where young people can enter. Limiting the sale of flavored tobacco products to stores that only allow adults to enter also limits underage youth’s ability to directly purchase tobacco. Despite youth tobacco compliance checks conducted by FDA and Minneapolis Business Licensing, Minneapolis Youth Congress surveys indicate that 18% of teens who smoke were able to regularly purchase tobacco directly from a store.

Currently, flavored tobacco products are available in most of Minneapolis’ 355 tobacco retail outlets including convenience stores, gas stations and pharmacies. As of June 1, 2015, 15 of these tobacco outlets are classified as a tobacco products shop. A tobacco product shop:

- Has an entrance door opening directly to the outside
- Derives at least 90% of revenue from tobacco products
- Must prohibit anyone under 18 years of age from entering if self-service is available

Some tobacco shops use open displays that are accessible to the public without the intervention of a store employee and for this reason, state law prohibits them from allowing minors to enter. The Minneapolis ordinance will restrict a tobacco product shop from allowing minors to enter regardless of the method of display (self-service open displays or “behind the counter”).

Price

To address the cheap price of flavored and unflavored cigars, this ordinance sets a minimum price for all cigar products. Research that shows the price of tobacco has a direct impact on smoking rates. Higher tobacco prices not only reduce smoking rates, they induce users to quit, reduce initiation, reduce uptake among young people and lead to larger reductions in tobacco use among young people than adults.^{ix} Youth are the most price-sensitive as they generally have less income and less likely to be nicotine dependent.^x

Four Minnesota cities have employed this pricing strategy (Bloomington, St. Paul, Maplewood and Brooklyn Center). The ordinance has created changes in the marketplace with fewer places selling the cheapest cigars.

The Minneapolis ordinance will set a minimum price of \$2.60 per stick before tax for cigar products sold individually, in two-packs or three-packs. This means cigars will have the minimum before-sales tax price of:

- \$2.60 for a single cigar
- \$5.20 for 2-pack
- 3-packs: \$7.80 for a 3-pack

Packs of four or more cigars will be sold at a minimum of \$10.40 before sales tax. These prices are inclusive of any discount, price promotion or coupon. This means that the minimum price per stick must be \$2.60 after the price discounts have been applied. Price discounts include coupons, “buy one, get one free” and other pricing strategies that reduce the overall price or per unit price of tobacco products.

Effective Date, Vendor Education and Enforcement

This ordinance will take effect September 1, 2015. If the ordinance amendments are approved, the Minneapolis Health Department will notify all license holders and provide a list of the products to which

the ordinance applies. Immediately after the ordinance goes into effect, Business Licensing will make a round of inspections to ensure compliance. After this initial round of inspections, Business Licensing will enforce the ordinance through its annual license inspections, youth compliance checks and upon complaint. Stores that violate the ordinance will be subject to the standard ordinance penalties, unless otherwise specified: administrative citations (\$200 for first offense and doubling thereafter), or misdemeanor criminal prosecution. Repeated offenses would subject a license holder to potential suspension, revocation, nonrenewal or other adverse license action.

Notice of Public Hearing

To inform current tobacco vendors of these proposed ordinance changes, the Minneapolis Health Department mailed letters to all license holders on May 22, 2015. The letter included the ordinance amendment and guidance on submitting comments about the amendments. Emails were also sent to license holders, business associations and neighborhood organizations. Minneapolis Business Licensing posted the ordinance language and public hearing details on its website on May 22, 2015.

ⁱ Teens and Tobacco in Minnesota, 2014 Minnesota Department of Health, <http://www.health.state.mn.us/divs/chs/tobacco/teentobaccoexecsumm110614.pdf>

ⁱⁱ U.S. Food & Drug Admin., FACT SHEET: FLAVORED TOBACCO PRODUCTS 1 (2011), available at <http://www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf>.

ⁱⁱⁱ U.S. Food & Drug Admin., FDA Parental Advisory on Flavored Tobacco Products – What You Need to Know (2013), available at <http://www.fda.gov/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/ucm183196.htm>.

^{iv} E-cigarette use triples among middle and high school students in just one year, Centers for Disease Control and Prevention, April 15, 2016. <http://www.cdc.gov/media/releases/2015/p0416-e-cigarette-use.html>

^v Minneapolis Youth Congress Tobacco Initiative: Summary Report

^{vi} Tobacco Use in North Minneapolis, Northpoint Health and Wellness Center, July 2014.

^{vii} See generally, ^{isa} Henriksen et al., *Reaching Youth at the Point of Sale: Cigarette Marketing is More Prevalent in Stores Where Adolescents Shop Frequently*, 13 TOBACCO CONTROL 315 (2004); Scott T. Leatherdale & Jocelyn M. Strath, *Tobacco Retailer Density Surrounding Schools and Cigarette Access Behaviors Among Underage Smoking Students*, 33 ANNALS BEHAV. MED. 105, 106 (2007); William J. McCarthy et al., *Density of Tobacco Retailers Near Schools: Effects on Tobacco use Among Students*, 99 AM. J. PUB. HEALTH 2006, 2011-12 (2009); Joshua H. West et al., *Does Proximity to Retailers Influence Alcohol and Tobacco Use Among Latino Adolescents?*, 12 J. IMMIGRANT & MINORITY HEALTH 626, 631 (2010).

^{viii} Memorandum, Proposed RJR Strategy in Convenience Stores, from G.W. McKenna to M.L. Orlowsky (July 26, 1983), available at <http://legacy.library.ucsf.edu/tid/fyd29d00/pdf?search=%22502098107%208114%22> (Bates No. 502098107/8114).

^{ix} See WORLD HEALTH ORG.: INT'L AGENCY FOR RESEARCH ON CANCER, IARC HANDBOOKS OF CANCER PREVENTION: TOBACCO CONTROL, VOLUME 14: EFFECTIVENESS OF TAX AND PRICE POLICIES IN TOBACCO CONTROL (2011)

^x Chaloupka FJ, Cummings KM, Morley CP, Horan JK. Tax, price and cigarette smoking: evidence from the tobacco documents and implications for tobacco company marketing strategies. *Tobacco Control*. 2002;11(suppl 1):l62-72.